

Memorandum

Date: October 18, 2019

To: Ms. Cindy Fong
California Department of Transportation
District 4
Office of Environmental Analysis, MS-8B
Post Office Box 23660
Oakland, CA 94623-0660

Governor's Office of Planning & Research

OCT 18 2019

STATE CLEARINGHOUSE

From: 
Mr. Gregg Erickson, Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: State Route (SR) 29/SR 221 Soscol Junction Improvement Project, Mitigated Negative Declaration, SCH #2019099072, County of Napa

The California Department of Fish and Wildlife (CDFW) has reviewed the above State Route (SR) 29/SR 221 Soscol Junction Improvement (Project) Mitigated Negative Declaration (MND) as proposed by the lead agency, the California Department of Transportation (Caltrans) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ Pursuant to our jurisdiction, CDFW is submitting comments on the MND as a means to inform Caltrans as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

Pursuant to our jurisdiction, CDFW is concerned the Project will have a significant impact on fish passage, aquatic resources and riparian woodlands that provide suitable habitat for several special-status species including Swainson's hawk (*Buteo swainsoni*), listed as threatened under CESA and Central California Coast steelhead (*Oncorhynchus mykiss*) distinct population segment (DPS), listed as threatened under the federal Endangered Species Act (ESA). The Project may also have the potential for significant impacts to pallid bat (*Antrozous pallidus*), Contra Costa goldfields (CCGF) (*Lasthenia conjugens*) and western pond turtle (*Actinemys marmorata*) all State Species of Special Concern (SSC). CDFW also has concerns over the Project maintaining and not specifically addressing an instream contrivance in the form of the current culvert system at Soscol Creek that prevents, impedes or tends to prevent or impede the passing of fish up and down stream as it pertains to Fish and Game Code section 5901. CDFW is providing comments and recommendations on the MND regarding those activities involved in

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING

Caltrans in partnership with the Napa Valley Transportation Authority (NVTa), proposes to reconfigure the existing intersection (Soscol Junction) of State Route (SR) 29 and SR 221/Soscol Ferry Road in Napa County from a signalized intersection to a full-diamond interchange, with two roundabout intersections on either side of SR 29. This proposed Project is to improve traffic operations to alleviate congestion between Napa Valley and towards Interstate 80 (I-80) and SR 37. Bicycle, and pedestrian access is proposed to improve connectivity between existing bicycle and pedestrian access on SR 29 and SR 221.

The Biological Study Area (BSA) established for the Project encompasses the entire extent of the Project footprint and immediately adjacent areas. The BSA is defined as the area (aquatic and terrestrial) that may be directly, indirectly, temporarily, or permanently impacted by construction. The established BSA for the Project is 84.29 acres. Undeveloped portions of the BSA are primarily annual grassland with scattered trees, including oak (*Quercus* spp.) and eucalyptus (*Eucalyptus* spp.) occurring as localized patches of woodland. A riparian corridor dominated by California bay (*Umbellularia californica*) and white alder (*Alnus rhombifolia*) is also present where Suscol Creek crosses the BSA near the intersection of SR 221 and SR 29. A few seasonal wetland and ephemeral drainages and swales are also in the BSA.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

California Endangered Species Act

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if "take" or adverse impacts to any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Fish and Game Code 5901

Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream in Districts 1, 1³/₈, 1¹/₂, 1⁷/₈, 2, 2¹/₄, 2¹/₂, 2³/₄, 3, 3¹/₂, 4, 4¹/₈, 4¹/₂, 4³/₄, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream. Fish are defined as a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals (Fish and Game Code section 45).

Additional Fish and Game Code Regulations

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

GENERAL AVOIDANCE AND MINIMIZATION MEASURES COMMENTS AND CONCERNS

CDFW offers the following comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Swainson's hawk

The MND references conducting protocol level surveys in accordance with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*. CDFW strongly recommends that the TAC survey method be strictly followed by starting early in the nesting season (late March to early April) in order to maximize the likelihood of detecting an active nest. Surveys should be conducted within a minimum 0.25-mile radius (and up to 0.5 miles depending on site-specific conditions) of the proposed Project area and should be completed for at least the two survey periods immediately prior to initiating any Project-related construction work. Raptor nests may be very difficult to locate during egg-laying or incubation, or chick brooding periods (late April to early June) if earlier surveys have not been conducted. These full-season surveys may assist with Project planning, development of appropriate avoidance, minimization and mitigation measures, and may help avoid any Project delays.

In order to avoid "take" or adverse impacts to Swainson's hawk in the event that an active nest is found during surveys, CDFW recommends avoiding all Project-related disturbance within a minimum of 0.25 miles (and up to 0.5 miles depending on site-specific conditions) of a nesting Swainson's hawk during the nesting season. Please refer to the CDFW guidance document on Swainson's hawk, which is available at <http://dfg.ca.gov/wildlife/nongame/docs/DFG-1994SWHASTaffReportMitigation.pdf>, on take avoidance, minimization and mitigation measures.

If "take" of Swainson's hawk or any other species listed under CESA cannot be avoided either during Project activities or over the life of the Project, please be advised that a CESA permit must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA permit is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as

significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

The Biological Resources Section of the MND provides adequate avoidance and minimization measures for permanent impacts to Swainson's hawk nesting habitat but Mitigation Measure AMM BIO-12 does not include measures to avoid or minimize loss of Swainson's hawk foraging habitat that may result from implementation of the proposed Project. Any permanent loss of Swainson's hawk foraging habitat should be appropriately described in the MND and mitigated below a level of significance as required by CEQA. CDFW recommends mitigation for loss of Swainson's hawk foraging habitat based on the following ratios be incorporated into the MND:

- For projects within one-mile of an active nest tree, provide one-acre of land for each acre of development authorized (1:1 ratio).
- For projects within five miles of an active nest tree but greater than one-mile from the nest tree, provide 0.75 acres of land for each acre of development authorized (0.75:1 ratio).
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, provide 0.5 acres of land for each acre of development authorized (0.5:1 ratio).

Roosting Bats

The MND references conducting protocol level surveys in AMM BIO-3 in accordance with protocols acceptable to CDFW for species such as pallid bat, which has the potential to occur at the Project site, but does not propose any compensatory mitigation for impacts to bat species nor does it adequately address permanent impacts to riparian habitat that may be potentially occupied by roosting bats. The Project proposes removal of up to seven riparian trees which could be considered a permanent impact to roosting bats and the Project also proposes to fill in cracks or crevices in the culvert structure over Suscol Creek for multiple seasons and not remove the filler until the Project is complete, which could permanently impact roosting bat species in the Project location. CDFW recommends that the MND include the following language in AMM BIO-3 to reduce impacts below a level of significance for roosting bats:

"Bats will not be disturbed without specific notice to and consultation with wildlife agencies. If bats are found, a phased exclusion/removal plan shall be required to submit for approval to the wildlife agencies. The plan should incorporate a phased removal strategy that allows roosting habitat to persist in transitioning areas throughout the course of the entire Project. A temporary roost habitat installation may be required on-site if roosting habitat will not be available for one full season or more due to Project related constraints. The plan submitted to wildlife agencies should also incorporate monitoring protocols before, during and after construction."

Fish Passage Analysis and Remediation

The current MND incorporates fish passage analysis at the conceptual level and identifies the barrier that exists at Suscol Creek on page 2-188 of the MND, but the MND specifically notes that the current proposed alternatives for this Project may not incorporate remediation of the fish passage barrier. CDFW strongly recommends the Project incorporate full remediation of the fish passage barrier at Suscol Creek as part of the updated Project Description. The structure maintained at Suscol Creek does not comply with section 5901 of the Fish and Game Code. Furthermore, the Bay Area California Fish Passage Advisory Committee (Bay Area FishPAC), to which Caltrans and CDFW are members, ranks this site (Passage Assessment Database ID

705518) as a priority site for full fish passage remediation with 3.4 miles of available habitat upstream of the crossing designated as critical habitat and another 4.8 miles of tributary habitat available that is considered good quality habitat. The Bay Area FishPAC considers this crossing as a barrier to steelhead passage due to low flow depths through the existing box culvert.

In addition, Senate Bill 857 (SB-857), which incorporates amended Fish and Game Code 5901 and added section 156 to the Streets and Highways Code states in section 156.3, "For any project using state or federal transportation funds programmed after January 1, 2006, [Caltrans] shall insure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish passage is done prior to commencing project design. [Caltrans] shall submit the assessment to the [Department of Fish and Wildlife] and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the [Department of Fish and Wildlife]."

Therefore, the Project Description of the MND should be updated to include fish passage barrier remediation design because the Project is seeking an LSA Agreement and will therefore directly affect a stream crossing where anadromous fish are, or historically were found. The Biological Resources section of the MND should also be updated to include a section that specifically discusses Fish and Game Code section 5901 and SB-857 and how it pertains to the requirement that the Project must remediate the fish passage barrier at Suscol Creek. The remediation plans or designs to address fish passage at this location should be conducted in consultation with CDFW and other natural resource agencies.

Plant Survey Protocol

AMM BIO-1 of the MND should be updated to include guidelines from the following protocols:

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and require the identification of reference populations. Please refer to the Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) (2018).

CDFW recommends the following is incorporated into AMM BIO-1 of the MND:

A qualified botanist shall conduct annual surveys prior to the initiation of ground disturbance activities for special-status and rare plants that have the potential to occur at the Project sites. The surveys shall occur during the appropriate blooming periods for all sensitive species potentially occurring within the Project area and require the identification of reference populations. Special-status, rare and uncommon vegetation shall be avoided to the maximum extent feasible during construction activity through designation of environmentally sensitive areas. If impact is unavoidable no work shall occur until CDFW has been consulted. If special-status, rare, or uncommon vegetation is discovered throughout the course of the Project CDFW shall be notified within five (5) days of discovery.

CONCLUSION

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California's fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

Questions regarding this letter or further coordination should be directed to Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 428-2093 or Robert.Stanley@wildlife.ca.gov; or Mr. Craig Weightman, Environmental Program Manager at (707) 944-5577 or Craig.Weightman@wildlife.ca.gov.

cc: State Clearinghouse #2019099072